IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Ramveer Vs. State of Rajathan
(D.B. Criminal Appeal No.1730/2002)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 29-11-2002 in Sessions Case No.31/2002 passed by Shri Suresh Chand Sharma, RHJS, Additional Sessions Judge (Fast Track) Laxmangarh.

Date of Judgment: May 11, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. M.K.Kaushik] for the appellant.
Mr. N.S.Shekhawat]

Mr. M.L.Goyal, Public Prosecutor for the State.
Mr. D.S.Jadaun, for the complainant.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Ramveer, the appellant herein, was indicted before learned Additional Sessions Judge (Fast Track) Laxmangarh, for having committed murder of Het Ram. During the pendency of trial, application under section 319 CrPC was filed for taking cognizance against co-accused Rama, Prakash and Jai Dei. Learned Additional Sessions Judge took cognizance of the offence issued warrant of arrest against them. After the warrants received back unserved, learned Judge declared them absconder and trial proceeded against appellant Ramveer. On completion of trial learned trial Judge convicted and sentenced the appellant under section 302/34 IPC to suffer imprisonment for life and fine of Rs.2000/-, in default to further suffer simple imprisonment for six months.

2. It is the prosecution case that on February 3, 2001 around 11 AM when Het Ram (since deceased) had gone to Rama's house for the purpose of bringing back his pipes, he was given beating by Rama, Ramveer, Prakash and Jai Dei. Het Ram was removed to Alwar Hospital, where he was declared dead. A written report (Ex.P-1) was lodged by Bheem Singh (Pw.1) at Police Station Kathumar where case under section 302/452 IPC was registered and investigation commenced. Necessary memos were drawn, statements of witnesses were recorded and after completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Laxmangarh. Charge under section 302 IPC was framed against the accused, who denied the charge and claimed trial. The prosecution in support of its case examined as may as 14 witnesses. In the explanation under Sec.313 Cr.P.C., the appellant claimed innocence and stated that Hetram died in an accident. Learned trial Judge on hearing final submissions convicted and sentenced the appellant vide judgment dated November 29, 2002 as indicated herein above.

3. We have heard learned counsel for the appellants, learned Public Prosecutor and learned counsel for complainant and with their assistance scanned the material on record.

4. From the autopsy report it appears that death of Het Ram was not accidental but homicidal in nature. As per Post Mortem Report (Ex.P-12) following ante mortem injuries were found on dead body:-

1. three abrasions 4x3, 3x2, 2x2 cm Rt. knee anteriorly

2. Both eye lids of Lt. eye bruised.
3. Lacerated wound 6 x 1 x ½ cm Lt. side fronto parietal skull.
4. Lacerated wound 6x1x scalp deep Lt. side occipital skull.

In the opinion of Dr. Amar Singh Rathore (Pw.8) the cause of death was coma due to injuries to skull and brain.

5. Although prosecution examined Bheem Singh (Pw.1) (father of deceased), Gokul (Pw.2) (uncle of deceased) and Lekh Ram (Pw.6) (brother of deceased) as eye witnesses of the incident, the prosecution case from the very beginning was that the incident occurred inside the house of co-accused Rama and no person other than the accused persons was present inside the house. In the written report (Ex.P-1) informant Bheem Singh (Pw.1) wrote thus:-

"ये लोग हेतराम को घर के अन्दर मारपीट कर रहे थे।"

Having closely scrutinised the evidence of the witnesses we find that this fact could only be established that Het Ram had gone to the house of Rama where he was given beating and because of the injuries Het Ram died in the Hospital. It is difficult for us in the facts and circumstances of the case to hold that Bheem Singh, Gokul and Lekh Ram were present at that particular time when the incident occurred.

6. Fact situation that emerges from the material on record may be summarized as under:-

(i) There was no enmity between the appellant and the deceased and the occurrence was sudden affair.

(ii) Something which has not been completely unravelled might have sparked off the incident.

(iii) The incident occurred inside the house of co-accused

Rama and Het Ram died in the Hospital.

(iv) It could not be established as to who caused fatal injury.

7. Having analysed ocular and documentary evidence we notice that complainant party and accused party had no previous enmity. The prosecution witnesses did not explain as to why the incident occurred. This fact gives rise to the inference that the prosecution is guilty of suppressing the genesis and origin of the occurrence. Since it was a sudden incident, in the facts and circumstances of the case it could not be said that it was the appellant alone who acted in cruel or unusual manner and the case against him clearly fell within Exception 4 of Section 300 IPC.

8. For these reasons, we partly allow the appeal of appellant Ramveer and instead of section 302/34, we convict him under section 304 part II read with 34 IPC. Looking to the fact that the appellant has already undergone confinement for a period more than 6 years the ends of justice would be met in sentencing him to the period already undergone by him in confinement. The appellant Ramveer, who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case.

The impugned judgment of learned trial court stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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